

REMARKS

In the Office Action mailed June 10, 2009 the Office noted that claims 12-22 were pending and rejected claims 12-22. No claims have been amended, no claims have been canceled, and, thus, in view of the foregoing, claims 12-22 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

DOUBLE PATENTING

Claims 12, 20, 21 and 22 are provisionally rejected on grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12 and 13 of co-pending Application No. 11/148,433.

Claims 13, 16, 17, 18 and 19 are provisionally rejected on grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-11 of co-pending Application No. 11/148,433.

Claims 13 and 14 are provisionally rejected on grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending Application No. 11/148,433 in view of Hirotsune, U.S. Patent No. 7,102,987.

However, MPEP § 804(i)(1) states

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection **is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds,** the examiner should

withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn. [Emphasis added].

The present Application was filed June 6, 2005 while co-pending Application No. 11/148,433 was filed June 9, 2005. As the present Application is the earlier filed Application and the present provisional rejection is the only rejection outstanding, and a non-final rejection is still outstanding in the later filed co-pending Application, the Applicants respectfully request that the Examiner withdraw the rejection.

SUMMARY

It is submitted that claims 12-22 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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